IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2976 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE SHARAD D.DAVE

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

STATE OF GUJARAT - Petitioner(s)

Versus

SURESH MAGANLAL JOSHI - Respondent(s)

==========

Appearance :
MS RITA CHANDARANA, AGP for Petitioner(s) : 1,
DS AFF.NOT FILED (R) for Respondent(s) : 1,
MR MAHENDRA K PATEL for Respondent(s) : 1,
==========

CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 10/10/2005

CAV JUDGMENT

1.By filing this petition under Article 227 of the Constitution of India, the petitioner – State of Gujarat has challenged the judgment and award passed by

the Presiding Officer, Labour Court, Junagadh dated 24.10.1994 in Reference (LCJ) No.179 of 1990 (Old Reference (LCR) No.1141 of 1984) by which the Labour Court has directed the petitioner to reinstate the respondent workman to his original post with continuity of service and without back wages.

2. Being aggrieved and dissatisfied with the aforesaid judgment and award passed by the Labour Court, Junagadh, the petitioner has filed the present petition under Article 227 of the Constitution of India for quashing and setting aside the same.

3. Having heard the learned advocates appearing for the parties and having perused the material on record, it can be seen that this Court (Coram: Y.B.Bhatt,J) vide order dated 28.7.1995 admitted the matter and thereafter this matter has been adjourned from time to time for final hearing.

4. It is the contention on behalf of the respondent workman that he was working as Tracer on daily wages from 1978 and that the petitioner herein as terminated his services from 17.10.1983. The said contention of the respondent workman has been accepted by the Labour Court after appreciating the evidence on record, more particularly, the certificate issued by the Deputy

Executive Engineer that the respondent workman is discharging the duty as Tracer on daily wages from 16.8.1978. In this view of the matter, the Labour Court came to the conclusion that the respondent workman was working from 1978 to 1983 and it is also recorded that this period of work by the respondent has been accepted by the petitioner herein. The Labour Court also recorded the witness of the petitioner has admitted in the affidavit on oath Exh.57 that the respondent workman was working from 1978 to 1983, and, in this view of the matter, the Labour Court recorded the finding that the respondent workman has worked for more than 240 days, and, therefore, without following the provisions of Section 25-F, the petitioner ought not to have terminated the services of the respondent workman.

5. It is also required to be noted that so far as the contention of the petitioner that the respondent workman by himself has left the services is concerned, the petitioner has not issued any notice to the respondent workman or called for any explanation from him for his alleged absence and even failed to establish before the Labour Court that the respondent workman has abandoned his services.

6.Even otherwise, this is a petition under Article 227 of the Constitution of India and this Court cannot reappreciate the evidence on record. At this stage, it is required to be noted that 240 days of continuous service by itself does not give rise to claim permanancy, and, in this view of the matter a direction for reinstatement for violation of Section 25-F of the Industrial Disputes Act, 1947 would restore to the workman the same status which he held when terminated.

7.Under the circumstances, I do not find any substance in this petition and, therefore, the same is required to be dismissed. This petition is dismissed subject to the aforesaid observations. Rule is discharged. Interim relief, if any, granted earlier stands vacated forthwith. No costs.

(Sharad D.Dave,J)

pathan